

NOTICE TO THE BAR

Re: Proposed 2014 Attorney Discipline Budget

The Report of the Supreme Court's Disciplinary Oversight Committee on the proposed 2014 Attorney Discipline Budget has been submitted to the Supreme Court for action. The Court has directed that the Report and an Overview of the proposed 2014 Attorney Discipline Budget be published for comment.

Those seeking to comment should do so in writing by November 21, 2013, as follows:

Via mail:

Clerk of the Supreme Court
Richard J. Hughes Justice Complex
P.O. Box 970
Trenton, New Jersey 08625-0970

Via electronic mail:

Comments.mailbox@judiciary.state.nj.us

/s/ Mark Neary

Mark Neary, Esq.
Clerk of the Supreme Court

Dated: October 16, 2013

**SUPREME COURT OF NEW JERSEY
DISCIPLINARY OVERSIGHT COMMITTEE**

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SUPREME COURT CLERK'S OFFICE
RICHARD J. HUGHES JUSTICE COMPLEX
P.O. BOX 970
TRENTON, NEW JERSEY 08625
EUGENE TROCHE, ESQ.
SECRETARY
(609) 341-3830

October 11, 2013

The Honorable Chief Justice Stuart J. Rabner and
Associate Justices of the Supreme Court
Richard J. Hughes Justice Complex
P.O. Box 970
Trenton, New Jersey 08625

Re: 2014 Attorney Discipline Budget

Dear Chief Justice Rabner and Associate Justices:

The Supreme Court's Disciplinary Oversight Committee (DOC or Committee), in consultation with the Administrative Office of the Court's Office of Management and Administrative Services (OMAS), has reviewed the proposed 2014 Attorney Discipline Budget. The Committee thanks Julianne DeCore, Esq., Chief Counsel of the Disciplinary Review Board (DRB); Charles Centinaro, Esq., Director of the Office of Attorney Ethics (OAE); Susan Fleming, OAE Administrator; and the staffs of the DRB and OAE for their efforts in preparing the proposed budget. The Committee also thanks OMAS Director Shelley Webster, and Assistant Chief Linda McAdams, for their assistance during the budget process. Finally, the DOC acknowledges the expertise of the Budget Subcommittee and commends it for its diligent efforts.¹

¹ The Budget Subcommittee members are Co-Chair Maureen Kerns, Esq., Co-Chair Tony Guacci, Mike Furey, Esq., Paris Eliades, Esq., Richard Sackin, Joel Rosen, Esq., and Spencer Wissinger, III.

The Committee considered and approved the proposed 2014 budget at its meeting on September 11, 2013. This letter reflects the Committee's analysis and recommendations. The Committee requests the Court's review and approval to publish this letter and the 2014 Discipline Budget Overview.² The Budget Reserve Projections through 2016 are also enclosed for the Court's consideration.

I. Overview.

The disciplinary budget year runs from January 1 to December 31. The proposed budget for 2014 is \$13,156,572. This represents approximately a 2.8% increase over the budget approved for 2013. As discussed in greater detail below (Section II(A)) the primary core expense is salaries and benefits. The cost of benefits per employee has continued to accelerate, placing a strain on the budget. As a result, salaries and benefits will be higher in 2014. Information technology ("IT") expenses will continue to be significant as the OAE and DRB continue to make long deferred upgrades to their systems in 2014. Some upgrades that were planned for 2014, however, are being deferred into 2015 or later in order to spread those expenses over a longer period of time. (See Section II(B)). A full review of the IT Strategic Plan will take place at the December 2013 DOC meeting.

As discussed in Section III, the DOC is recommending an increase in the attorney assessment from \$135 to \$148. As explained in Section IV, a \$148 registration fee for plenary admitted attorneys practicing 3-49 years is projected to generate \$9,990,000. Attorneys practicing 2 years pay \$25, yielding another \$68,750. Thus, total revenues from plenary admitted attorney registration fees are anticipated to be \$10,058,750.³ When other fees are added, total projected revenues for 2014 are estimated to

² The Budget Overview is a synopsis of the budget. It is published in lieu of the entire budget report, pursuant to Rule 1:20B-4(b).

³ The fee discussed in this report is for the disciplinary system only. Additional sums are added to this fee for the Lawyers' Fund for Client Protection, the Lawyers Assistance Program, and the Mandatory Continuing Legal Education Program.

be \$12,196,850. See Section IV below. Thus, revenues from registration fees and other sources are expected to increase by 10% versus the 2013 projected revenues.

With total projected revenues of \$12,196,850 and total projected expenses of \$13,156,52, there will be a budgeted deficit for 2014 of \$959,722. The reserve at the end of 2013 is projected to be \$2,322,727. As a result of the deficit, the projected reserve at the end of 2014 will be \$1,363,005 or 10.4% of the operating budget for 2014. As part of the 2013 budget presented to the Court in October, 2012, the targeted reserve for 2014 was anticipated to be approximately 10% of projected expenses. The 2013 proposed budget projected a reserve of 18.6% at the end of 2013, and the objective over the last several years has been to bring the reserve down to 10% of expenses. The 10% reserve target is anticipated to cover a shortfall in revenues and/or overage of expenses in the current year, as well as any timing issues in the collection of revenues vs. payment of expenses. This reserve would enable the OAE and DRB to continue operating without disruption if any of these events materialized.

The DOC believes the recommended \$148 registration fee is necessary to maintain the high level of service provided by the OAE and DRB. As explained in this Report, an effort has been made to avoid a more substantial increase by deferring certain anticipated expenses from 2014, including IT improvements and an expansion of the OAE's Random Audit Program.

II. Expenses.

A. Salaries and Benefits.

Salaries and benefits typically constitute approximately 80% of the budget, and that pattern continues for 2014 with salaries and benefits projected to cost \$10,577,770 (80.4% of the \$13,156,572 budget). This budgeted number reflects a 2% vacancy factor, allowing for resignations, terminations, etc. and the timing to backfill open positions.

Salaries for represented staff in the disciplinary system are established through negotiated labor contracts. The OAE and DRB have no control over these contracts. The most recent labor contract for represented judiciary

employees expired on June 30, 2012, and the Administrative Office of the Courts (AOC) is currently in the process of negotiating contracts for fiscal years 2013 to 2016. If the AOC enters into contracts that are similar to the Executive branch contracts, OAE and DRB personnel are not expected to receive cost-of-living raises in 2014. Staff members who are not at the top of their salary ranges may receive progression increases, however. Both of these circumstances have been assumed in the 2014 budget.

As noted above, a vacancy rate is always factored into the disciplinary budget for salaries and benefits. This figure contemplates the loss of staff due to retirements, terminations, and resignations. From 2005 to 2011, the annual budget included a 2% vacancy rate. In 2012, the budgeted vacancy rate was increased to 5% due to the anticipated increase in planned retirements. The 2013 vacancy rate reverted back to 2% as the increased number of open positions were anticipated to be filled by the end of 2012. The 2% vacancy rate is maintained for 2014 as we anticipate no extraordinary events related to staffing, resulting in a budget for salaries totaling \$7,081,417. This represents a .7% increase over the \$7,035,244 projected actual salary expenditures for 2013.

With regard to benefits, the Office of Management and Budget estimates an increase for state employees from 43.8% of salary costs for 2013 to 49.5% for 2014, excluding workers' compensation contributions. The actual rate will not be finalized until December. Based on this estimated rate, the 2014 budget for benefits is \$3,496,354 – a 14.2% increase over 2013's projected \$3,061,084 expenditure.⁴

As a result of the increased benefit rate/costs and the backfilling of vacancies that extended back to 2012, the 2014 budget for salaries and benefits reflects a 5% increase over the projected actual costs for 2013.

B. Notable Expenses.

1. Technology/Data Processing. The 2013 budget featured \$517,619 in IT/data processing expenses, a 40% increase over the amount that was budgeted for 2012. The

⁴ The projected increase for 2014 is above the estimate of the Office of Management and Business because the vacancy rate in 2014 is projected to be lower than it was in 2013.

total IT/data processing budget for 2014 is \$369,200 or a 27% decrease when compared to the latest estimate for 2013. While still significant, these expenses are substantially below what they would be if the upgrades previously planned for 2014 were implemented. The DOC proposes to defer a number of these IT projects to 2015 or later in an effort to spread these expenses over a longer period, to avoid a more substantial fee increase than already being proposed, and to permit the OAE and DRB to prioritize these projects.

The OAE and DRB will present an IT Strategic Plan at the December, 2013 DOC meeting, providing a view of the costs, benefits and timing of potential IT initiatives over the next several years. This will enable the OAE and DRB to prioritize those projects that are integral to continued operations, and determine which initiatives will generate the greatest benefits for the anticipated cost. A number of IT upgrade projects were delayed in 2013 due to the OAE's IT Manager position vacancy after the IT Manager retired in mid-2011. Through the reallocation of funds and hard work, many of the upgrades were completed by August 2013. In 2014, the OAE expects to complete the balance of the software upgrades and some other items deferred from 2013, including upgrades to the OAE website (the DRB expects to complete its website upgrades in 2013), all of which is clearly outlined in the budget narrative.

2. The Random Audit Program. The OAE administers the Random Audit Program that randomly selects private practice law firms for audit of their trust and business accounts. The purpose of the Program is twofold: compliance with recordkeeping Rules and deterring attorneys from misusing trust funds. The Program consists of a Chief Auditor, an Assistant Chief Auditor, two Senior Compliance Auditors, and one Compliance Auditor.

In 2011, the OAE proposed expansion of the Program, the first in twenty-eight years, to address the growing number of attorneys and law firms in the State. As a result of that larger attorney population, audits have decreased by about 40% since the 1980s. To respond to this situation, the OAE received the necessary approvals to hire two compliance auditors.

In an effort to keep expenses down in 2014, no new personnel are presently being hired for the Random Audit Program, resulting in a savings of approximately \$165,000.

3. Equipment. The OAE and DRB annually replace personal computers, depending on age and condition, in accordance with Judiciary standards. This practice allows the disciplinary system to remain current with changing technical requirements while spreading the costs over a multi-year period. Due to a number of issues, the OAE did not replace any personal computers in 2012 and purchases in 2013 have been limited.

As part of the OAE's effort to keep costs down, only one-fifth (as opposed to the usual one-fourth) of the personal computers and printers will be replaced in 2014.

III. The Annual Assessment and the Reserve.

In 2012, the DOC addressed the fact that the reserve had been increasing steadily since 2009 when the annual assessment was increased from \$126 to \$140, and it recommended that the Court reduce the annual assessment to \$135 for the 2012 budget year. By running an operational deficit and making up the difference from the reserve, the DOC anticipates reducing the reserve to a level closer to its goal of 10% of annual expenses. For 2013, the DOC recommended that the Court again approve a \$135 assessment to continue the progress made in 2012 towards a 10% reserve. The reserve at the end of 2013 will have dropped substantially and is projected to be 18.2%, a reduction of over \$1.5 million from 2012.

To continue to meet disciplinary system program needs and the progress made in reducing case backlog, and to improve the time to complete cases, the DOC is recommending that the plenary admitted attorney registration fee be increased from \$135 to \$148. The increase needed is primarily to meet the anticipated increase in salaries and benefits for existing positions, as no additional headcount is included in the 2104 Budget. The difference between the 2014 budget for expenses (\$13,156,572) and the projected revenues at the \$148 fee level (\$12,196,850) is a deficit of (\$959,722, or 7.3% of the budget, which must be taken from the reserve. A \$148 registration fee is projected to result in a reserve of \$1,363,008 at the end of 2014, or 10.4% of the operating budget.

As is the case every year, New Jersey's annual assessment is reasonable in relation to other states.

Comparing the eighteen "voluntary" states, which do not require mandatory bar association membership or impose malpractice insurance fees, and ranking them from the most expensive to the least expensive, New Jersey's fee ranked #10. It should be further noted that of those states with lower registration fees, only one state regulates more attorneys than New Jersey.

IV. Revenue Projections.

Based on an annual assessment of \$148, the total revenue projected for 2014 is \$12,196,850. This is a 9% increase over the projected actual revenue for 2013, or \$1,018,850. For 2014, it is estimated that 67,500 attorneys practicing between three and 50 years will pay the fee, the same as in 2013. It is expected that 2,750 attorneys who have been practicing law two years or less will pay the \$25 fee, 250 less than the number who paid this fee in 2013 (3,000). Total receipts from plenary admitted attorneys paying the registration fee are projected to be \$10,058,750, or 82.5% of revenue.

Pro hac vice fees are estimated to be paid by 6,300 attorneys in 2014, generating \$932,400 or approximately 7.5% of all revenue. Approximately 1,175 attorneys are projected to pay the fee to be licensed as in-house counsel in 2014, generating \$173,900 in revenue. Other significant sources of revenue include late fees for attorneys who fail to timely register (\$200,000), prior year assessments that attorneys failed to pay (\$375,000), and the recovery of the costs of disciplinary investigations and proceedings from attorneys disciplined for unethical conduct (\$274,000).

V. Risks and Opportunities

As with any budget, this proposed budget contains unavoidable uncertainty. As a result, the DOC considers it prudent to be conservative in projecting revenue and expenses. While it is possible that actual revenues for 2013 may be a little higher than projected, thereby permitting the fee increase to be a little lower, the DOC considers it prudent to use a \$148 fee. It is guided by the uncertainty of the labor contracts, the likely prospect of increased benefit costs in the future, the need to implement long deferred IT improvements and the inherent limitations in projecting future revenue and expenses.

The proposed 2014 Discipline Budget is necessarily sensitive to these variables. In preparing this budget, the DOC has attempted to balance risk and opportunity. It is an aggressive, but achievable, plan designed to meet or exceed expectations within a fiscally responsible framework.

Conclusion

The DOC has reviewed and discussed each category of the proposed 2014 budget, and it believes that the budget's recommended \$148 annual assessment promotes fiscal responsibility while maintaining a high level of services to the public and the bar. It has, where prudent, deferred expenses to later years to avoid an even more substantial increase.

The DOC respectfully requests that the Court permit the publication of this letter and the Budget Overview. The DOC recommends that, following the comment period, the Court approve the 2014 Attorney Discipline Budget, as proposed.

Respectfully Submitted,

/s/ Michael K. Furey

Michael K. Furey, Esq.
Chair

MKF/et
Enclosures

cc: Hon. Glenn A. Grant, J.A.D.
Acting Administrative Director of the
Administrative Office of the Courts
Mark Neary, Esq., Clerk, Supreme Court
Gail G. Haney, Esq., Deputy Clerk, Supreme Court
Disciplinary Oversight Committee
Shelley R. Webster, Director, Mgmt. & Adm. Svcs.
Linda McAdams, Ass't Chief, Mgmt. & Admin. Svcs.
Julianne K. DeCore, Esq., Chief Counsel, DRB
Charles Centinaro, Esq., Director, OAE
Paula Granuzzo, Esq., Statewide Coordinator
Susan Fleming, OAE

1.1 2014 DISCIPLINARY BUDGET OVERVIEW

REVENUES:

Attorney Registration Fees:

Practicing 3 - 49 years	(@ \$148)	\$ 9,990,000
Practicing 2 years	(@ \$25)	68,750
Total Registration Fees		\$ 10,058,750

Other Fees

Prior Year Payments	375,000
Fee Arbitration Filing Fees	80,000
Interest on Funds	7,200
Disciplinary Costs Recovered	274,000
In-House Counsel	173,900
Pro Hac Vice Fees	932,400
Multi-Jurisdictional Practice	29,600
Reinstatement Fees	65,000
Late Fees	200,000
Other Revenue	1,000
Total Other Fees	\$ 2,138,100

Total Projected Revenues 2014	\$ 12,196,850
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EXPENSES:

Salaries & Benefits:

Salaries at 98%	\$ 7,081,417
(Allows for 2% vacancy rate)	
Fringe Benefits at 49.5%	\$ 3,496,354

Total Salaries & Benefits	\$ 10,577,770
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Operating Expenses:

OFFICE EXPENSE	696,984
HEARING FEES	197,500
OTHER EXPENSES	123,405
MAINTENANCE & FIXED EXPENSES	372,188
SPECIAL PURPOSE	1,123,725
Emoluments	539,500
Contingencies	7,500
Attorney Registration Costs	576,725
EQUIPMENT	65,000

Total Operating Expenses	\$ 2,578,802
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Total Projected Expenses 2014	\$ 13,156,572
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Revenues Less Expenses 2014	\$ (959,722)
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ADD: Reserve, End of 2013	\$ 2,322,727
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Reserve, End of 2014	\$ 1,363,005
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10.4%